



State of New Mexico
House of Representatives
Santa Fe

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Alisha Tafoya Lucero
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RE: The Restricted Housing Act

Dear Secretary Tafoya Lucero:

In preparation for the effective date of the provisions of the Restricted Housing Act (HB 364), I thought it important to highlight some of the changes our correctional facilities and jails need to be prepared for in the coming months. On July 1, 2019, it will no longer be lawful for any correctional facility to house children, or women known to be pregnant, in restricted housing. This means the jails and prisons throughout the state must immediately cease using housing conditions commonly referred to as segregation or solitary confinement for this population group. The law also requires facilities throughout the state to keep track of those people who are in restricted housing and mandates that private facilities make quarterly reports to the legislature of the details of any monetary settlements made with inmates as a result of litigation. The Restricted Housing Act also requires other mandatory recordkeeping, as described below in the "Reporting" section.

Effective July 1, 2019: Children.

Although CYFD has policies designed to prevent the isolation of children, juvenile detention facilities have been known to violate them, resulting in costly litigation. It is therefore important that each facility that houses children be given a copy of this new Act along with clear instructions to stop using isolation as a confinement tool. The new law does not make any distinction in its application based upon the type of charges a juvenile is facing or whether the individual is charged as an adult. It also provides protection to all children regardless of which agency has brought the charges. In other words, the law applies to all people under the age of 18 regardless of their status within the criminal justice system. It is therefore important that all facilities throughout the state that house children be notified, including those that house federally charged juvenile detainees.

Effective July 1, 2019: Pregnant Individuals

In order to comply with this law pregnant women must be categorically excluded from restricted housing. Although most facilities test for pregnancy upon admission, it will be necessary for all facilities to ensure any use of restricted housing on women be triaged for pregnancy. This requires the facility to initiate a process of checking a female's medical record prior to the use of restricted housing.

Effective July 1, 2019: Reporting

In order to understand the scope and use of restricted housing in New Mexico the new law requires facilities to report, on a quarterly basis, certain simple information. I have provided a table with the relevant information required below. The Department of Corrections is required to publish this information on their website and send a copy to the state legislature. Detention centers or jails are required to report this information to their local county commission.

Privately run facilities are given the additional requirement to report the monetary results of *any* lawsuits they have settled with inmates from their facilities. This information must also sent to the legislature on a quarterly basis.

With this in mind, it would be prudent to send a copy of the reporting requirements as demonstrated in the table below to every facility in the state prior to July 1st.

Reporting Requirements for All Correctional Facilities		
Frequency	Quarterly (Every 3 months)	
Identifying information to be included	<ul style="list-style-type: none">• Age• Gender• Ethnicity	
Population to be included	All inmates placed in restricted housing during previous 3 months. All inmates in restricted housing at the time the report is produced.	
Who the report must be produced to	Prisons	State Legislature, <i>and</i> Post to NMCD website
	Jails	Board of County Commissioners of county where facility is located
Additional Reporting Requirements for Private Correctional Facilities		
Report of all monetary settlements paid to inmates, former inmates, or inmates' estates as a result of lawsuits filed by inmates, former inmates or inmates' estates.		
Who the report must be produced to	State Legislature <i>and</i> Board of County Commissioners of county where facility is located	

Effective July 1, 2020: The Seriously Mentally Ill

This law will also restrict the use of restricted housing on the seriously mentally ill. Although this part of the law does not come into effect until next year, it is essential that facilities are aware of the new obligations and are given enough time to prepare themselves for the changes. I include another chart which lays out the obligations of a facility in simple terms. I have also provided a model policy based on existing DOC standards for the implementation of this part of the law in 2020.

Inmates subject to restricted use of restrictive housing:	
(1) Inmates diagnosed by a qualified health care provider with a serious mental illness, including <ol style="list-style-type: none">SchizophreniaPsychosisMajor depression, orBipolar disorder	
(2) Inmates diagnosed by a qualified health care provider with a: <ol style="list-style-type: none">Brain injuryOrganic brain syndrome, orIntellectual disability With significant functioning impairment.	
(3) Inmates clearly exhibiting: <ol style="list-style-type: none">Self-injurious behavior,Grossly abnormal and irrational behavior,Delusions, orSuicidal Behavior Unless those behaviors have been determined by a qualified health care provider to be unrelated to a serious mental disability (sections 1 and 2 above).	
Allowed uses on restricted housing for inmates qualified above*	
Restricted housing allowed for no more than 48 hours if:	<ol style="list-style-type: none">(1) Required to prevent an imminent threat of physical harm to the inmate(2) Required to prevent an imminent threat of physical harm to another person
Required Procedure by warden, jail administrator, or other person in charge of a correctional facility (up to 48 hours):	<ol style="list-style-type: none">(1) Make a written record of the facts and circumstances that necessitated inmate's placement(2) Prepare written action plan describing how the facility will transition inmate out of restricted housing at earliest opportunity(3) Notify the facility's health services administrator in writing that inmate was housed in restricted housing in accordance with Section 4 of the Restricted Housing Act.
Housing in restricted housing allowed for <i>more than</i> 48 hours if:	<ol style="list-style-type: none">(1) Requirements of Section (4)(A)(3) have been fulfilled (above),

	<ul style="list-style-type: none"> (2) Inmate poses an ongoing and realistic threat of physical harm to another person (3) Other methods for ensuring safety of threatened person have been considered and determined insufficient, impractical, or inappropriate, (4) Inmate is housed in restricted housing for the shortest time period under the least restrictive conditions practicable, (5) Correctional facility provides regular access to medical and mental health care for the inmate,
Required Procedure by warden, jail administrator, or other person in charge of a correctional facility (more than 48 hours):	<ul style="list-style-type: none"> (1) Must make a written record of the facts and circumstances that necessitated the inmate's continued placement in restricted housing, (2) Must make a written action plan describing how the correctional facility will transition the inmate out of restricted housing at the earliest opportunity, including a projected timeline, (3) Must notify the facility's health services administrator in writing that the inmate continues to be placed in restricted housing in accordance with Section 4 of the Restricted Housing Act.

*Restrictions do not apply during the first five (5) consecutive days of an inmate's confinement

With this model policy, jail and prison administrators can begin to make the necessary changes to become fully compliant with the law in 2020. It is my hope that with the cooperation of our partners in the correctional and detention systems, we can begin to eliminate the use of solitary confinement in New Mexico in all but the most exceptional circumstances. This law is an excellent first step in this process and I look forward to its implementation.

Best,


Antonio Maestas

cc: Gov. Lujan Grisham